

Canadian
Pamphlets

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Petition and other documents

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PETITION

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AND

OTHER DOCUMENTS

SHOWING THE

NULLITY OF THE BY-LAW

OF THE

CITY OF MONTREAL, No. 59,

Authorizing Subscription for \$1,000,000 Stock,

AND OF THE

ACT OF THE QUEBEC LEGISLATURE

INTITULED,

*"An Act to confirm certain By-laws authorizing subscriptions of Stock
in the Montreal Northern Colonization Railway Company."*

MONTREAL.

HERALD STEAM PRESS.

1873.

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INTRODUCTION.

The questions involved in the contestation of the By-law of the City of Montreal, in favor of the "Montreal Northern Colonization Railroad Company," and of the Act passed in the last session of the Legislature of Quebec for confirming that By-law, are of such magnitude that it is considered advisable to lay a copy of the proceedings, in pamphlet form, before the public ; and in order to the full understanding of the motives which have led to that course, and of the documents which follow, a brief introduction is offered as likely to prove useful.

These two pieces of legislation, the By-law and the Act referred to, have been secured by means notoriously objectionable, and are of a highly dangerous character.

It is contended that they exceed the power of the bodies from which they have emanated, and are, moreover, violations of Legislative justice and of the rights of property, and unless promptly and vigorously resisted, they will become the precursors of a system of legislation, in which the money and influence of wealthy railroad speculators will over-ride all the restraints of prudence and principle.

The example which the States of the neighboring Union afford, shows to what formidable proportions this evil may grow, and the recent action of their Legislatures and Courts to arrest it, give us warning to begin where they have found it necessary, for the preservation of the public safety and morality, to end.

The history of the By-law and the Act, shows that their entire course, from the beginning to the end, has been attended with influences of an unscrupulous and exceptionable character. The By-law is impeached on the following grounds :—

1. Because it is founded upon the illusory representation that the terminus of the Northern Colonization Railroad, in the eastern portion of the city, is to connect with a bridge over the St. Lawrence at Hochelaga, a scheme so extravagant and impracticable that no engineer

of character can recommend it, and which it is perfectly well known that the engineer of the Company does not now venture to persist in.

2. Because the By-law was carried by the vote of persons unqualified under the law to vote at all upon it, and is in fact inoperative and null in law.

3. Because a large proportion of the real estate owners, who were alone qualified to vote, abstained from doing so from the knowledge that the By-law was illegal.

4. Because upon its face it contains provisions some of which go beyond the authority of the city corporation, and others which are deceptive and fallacious, one of them promising to the citizens cheap supplies of firewood, and another holding out expectations to the inhabitants of the eastern portion of the city, which the promoters of the By-law know cannot be realized.

5. Because the By-law, as it now stands, instead of being of any benefit to the city, will be productive of great inconvenience and injury to it.

The promoters of the By-law, feeling that it could not be sustained on its own merits, and that it must necessarily be set aside by the Courts of Justice, in which suits had been instituted for that purpose, betook themselves to the Provincial Legislature, and there by means of powerful and indirect influences they obtained a law confirming it, this law presenting a disregard of the principles of sound legislation which it would be difficult to equal upon the pages of the statute book of any country.

The Act therefore is impeached,—

1. Because it is in excess of legislative power, and unconstitutional upon the grounds specified in the Memorial and Argument, Nos. 2 and 5.

2. Because it is unjust and oppressive, and a manifest abuse of legislative power.

These grounds of impeachment, as well of the Act as of the By-law, are fully explained in the documents which follow :—

1st. A summary of protest upon the city officers against levying any assessment, or issuing bonds, or otherwise acting under the By-law.

2nd. A Petition to the Governor General in Council to disallow the Act.

3rd. A Petition to the Legislature and the Lieutenant-Governor against passing the Act.

4th. Memorandum for the Lieutenant Governor.

5th. An argument in support of the Memorial to the Governor General in Council.

6th. A statement of facts connected with the By-law and the Act. Documents Nos. 1 and 2.

7th. Correspondence with the Attorney General of Quebec, soliciting the use of his official name for testing the By-law, and exhibiting his unjustifiable refusal to grant it.

There can be no reasonable doubt that the Act, and, as a consequence, the By-law, must be eventually set aside, and it is the intention of the memorialists to follow up their resistance of these vicious laws to that final consummation. It is hoped that the timely warning which they have given by these proceedings, and now renew by the publication of this pamphlet, may be a sufficient protection from the certain loss which must accrue, by trusting to representations of the validity of these laws by parties interested in them.

SUMMARY OF PROTEST BY THE REAL ESTATE OWNERS AGAINST THE MUNICIPAL CORPORATION, MONTREAL.

It is stated in the Protest :—

That the By-law authorizing the subscription of stock to the amount of \$1,000,000 in the “ Montreal Northern Colonization Railway Company,” and creating a mortgage to that amount upon all the real estate in Montreal, was passed, subject to the consent of the qualified electors of the city.

That actions at law have been instituted by real estate owners, and are still pending, for testing the validity of the By-law, in which it is declared to be null for the following among other reasons :—

Because the assessment, authorized by it, exceeds the limit within which the taxing powers of the Corporation are by law restricted.

Because it is subjected in terms to the votes of the qualified electors of the city generally, whereas by law the votes of real estate owners alone could be received upon it.

Because the votes of the tenant class of voters, and of other unqualified persons, were in fact received upon it contrary to law.

Because it is conditional, uncertain, informal, and defective in the mode of its enactment ; and is, moreover, in a high degree injurious to the interests of the city.

And it is further stated in the protest,—

That the act of the Quebec Legislature, pretending to confirm the By-law, is unconstitutional, being an excess of legislative authority, *ultra vires*, and is null and void.

That the passing of the Act was an abuse of legislative power.

That a Petition for the disallowance of the Act has been submitted to the Governor General in Council, and is now under His Excellency's consideration.

That other actions at law have been instituted, and are still pend-

ing, for causing the By-law and the Act of the Legislature pretending to confirm it, to be declared null.

Upon these grounds, which are explained and enforced in the documents following in this pamphlet, a large number of the wealthiest real estate owners in Montreal protest against the By-law and the Act as unjust, oppressive, illegal and void, and notify the officers of the City Corporation, that they intend to take and prosecute all steps as they may be advised in law, for having the By-law and all assessments and rates levied under it, declared illegal and inoperative, and also to set aside as null and void the Act pretending to confirm it.

The parties further notify and prohibit the Mayor and other officers of the Corporation from subscribing stock, or making assessments, or issuing bonds under the By-law, or from taking any proceeding whatever for giving effect to it, protesting against all such subscriptions for stock, assessments and bonds as illegal and inoperative, and having no force or effect to bind the parties protesting, the City, or the owners of real estate therein.

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THE NORTHERN COLONIZATION RAILROAD.

The following are the documents which have been sent to the Government at Ottawa in support of the application on the part of some of the citizens of Montreal for the disallowance, by the Governor General, of the Act of the Provincial Legislature of Quebec, passed for the purpose of giving validity to the proceedings on the Million Dollar Grant of this city. We believe that Mr Justice Day is acting in Ottawa for the petitioners.

Montreal, 22nd February, 1873.

Sir,—I have the honour of transmitting herewith a petition of certain real estate owners in the City of Montreal relating to an Act passed by the Legislature of the Province of Quebec intituled "An Act to confirm certain by-laws authorising subscriptions for stock in the Montreal Northern Colonization Railway Company," which together with the annexed papers I will thank you to submit to the consideration of His Excellency the Governor-General in Council. I have the honour to be sir,

Your obedient humble servant,
EDMUND BARNARD.

The Honorable JOSEPH HOWE, Secretary for the Provinces.

PETITION OF PROPRIETORS.

To His Excellency the Governor-General in Council.

The petition of the undersigned Proprietors of real estate in the City of Montreal,—

Respectfully Sheweth :

That your petitioners are citizens of Montreal and large owners of valuable real estate therein, and, as such, are deeply interested in the welfare and progress of the city, and in all legislation calculated to affect its prosperity and financial condition.

That in the last session of the Legislature of the Province of Quebec, an Act was passed, intituled "An Act to confirm certain By-laws authorizing subscriptions of stock in

"the Montreal Northern Colonization Railway Company."

That the By-law of the City of Montreal so confirmed created a mortgage on all the real estate in the city ; and it was objected to by your petitioners as defective and vicious in its provisions, irregular in the formalities of its enactment, and as having been obtained by the exercise of improper influences, and by surprise on the part of interested persons.

That before the passing of the said Act, several of your petitioners, viz : John H R Molson, Harrison Stephens, William Murray, Thomas Cramp, Henry Lyman, and Hector Munro, had instituted proceedings at law in Her Majesty's Superior Court, at Montreal, for the purpose of testing the legality of the said By-law, and of having it declared invalid ; which proceedings have never been finally adjudicated upon, and are now actually pending.

That your petitioners, upon the presentation to the Legislature of Quebec of the bill for confirming the said by-law, represented to both Legislative Chambers by petition, whereof a copy is hereunto annexed, that the passage of the same would be unwarrantable, oppressive and unjust, and prayed urgently to be permitted to establish by evidence the truth of their pretensions against the said by-law, but their application to that effect was refused.

That a memorial, whereof a copy is hereunto annexed, was presented on behalf of your petitioners to His Honour the Lieutenant-Governor of the Province of Quebec, praying that he would withhold his assent to the said bill, and refer it for the consideration and pleasure of His Excellency the Governor-General in Council, which His Honour declined to do.

That the effect of passing the said Act has been to deprive those of your petitioners who are named above of their right to a decision by the Superior Court in the suits then and now pending therein, and it

has taken from all the real estate owners in the city of Montreal an equal right to test the validity of the said by-law by the judgment of a competent court.

That the proceedings in resistance of the said by-law, and of the Act by which it is confirmed, were not undertaken by your petitioners, nor are they now continued, in a vexatious spirit, or for the purpose of obstructing a public work of acknowledged importance, but for the just and proper object of protecting themselves and other real estate owners in the city from injury and wrong.

That your petitioners submit as grounds of their present application: That in passing the said Act there was an excess of the Legislative jurisdiction conferred by the "British North America Act of 1867," because:

1st. The matter of the said Act is not included within the classes of subjects upon which the Legislature of the Province of Quebec has authority to act.

2d. The said act is retroactive in its effect and is in the nature of an *ex post facto* law.

3d. The Legislature has assumed to exercise judicial authority, and has usurped in direct terms the functions which appertain exclusively to the courts of law.

And further, that the passing of the said Act was an abuse of Legislative power.

Which grounds, with others, not herein specially assigned, are more fully stated and sustained in the memorandum of reasons annexed to this petition.

Wherefore, upon the premises, your petitioners pray that Your Excellency in Council will be pleased to take this, their petition, into your favourable consideration, and in the exercise of the powers and authority conferred by the British North America Act, will disallow the said Act passed by the Legislature of the Province of Quebec, intituled "An Act to confirm certain By-laws authorizing subscriptions of stock in the Montreal Colonization Railway Company."

A Larocque, for self H Stephens,
and Estate Berthe- Alfred Brown,
let, Thomas Davidson,
Muir, Ewan & Co, Hector Munro,
Wm Muir, Angus C Hooper, for
Thomas Mussen, self and as Execu-
Thos W Ritchie, tor to Estate Dow,
John Platt, John McDougall,
R A Lindsay, James Shearer,
Thomas McDuff, Romeo H Stephens,

Estate late Benjamin James Johnston,
Hall, per R A Lind- Thomas Darling.
say, Tutor, A W Ogilvie & Co,
John H R Molson, Owen McGarvey,
William Molson, William Murray,
Alfred Pinsoneault, Arthur Fisher,
Henry Lyman, Geo Moffatt,
Joseph Tiffin, J K Urquhart,
Theodore Hart, J Crathern,
C T Hart, J A Mathewson,
B Gibb; Edward Mackay,
R James Reekie, James Linton,
David Torrance, J G Burrows,
Thos Cramp, Thos Caverhill,
Robert Esdaile, Jas S Evans.
D Darling, N B Corse,
Robt Brodie, E F Ames.
and a large number of others.

APPENDIX NO. 1.

Petition of Proprietors of Real Estate in the City of Montreal, to the three Branches of the Legislature of the Province of Quebec.

Respectfully Sheweth:

That your petitioners have had communication of a Bill lately introduced in the Legislative Assembly, and intituled, "An Act to ratify certain By-laws authorizing "subscriptions of stock in the Montreal "Northern Colonization Railway Company, "and to change the name of the said Company."

That the second section of said Bill provides that the said Act may be invoked against any action instituted, or which may hereafter be instituted, containing conclusions adverse to the said By-law or to the said subscriptions.

That the effect of the said Bill will be to interfere with the actions brought by a number of large real estate owners, to set aside the By-law passed by the City of Montreal granting aid to the said railway to the extent of one million dollars, and thus to deprive the proprietors of real estate in Montreal, upon whom alone the obligation of paying the amount of the said subscription will fall, of the opportunity of obtaining, either individually or collectively, a judicial decision upon the legality of the said By-law.

That your petitioners cannot but consider the said Bill as wrong in principle and uncalled for and unnecessary in points of fact.

That the questions raised in the actions above-mentioned, involve important principles connected with the Charter of the City of Montreal, and among others the limit of the borrowing and assessing powers

of the City, and that to pass the said Bill might effect a change in the City Charter which has never been contemplated or prayed for by the City of Montreal.

That the promoters of the said By-Law have pressed the same upon the attention of the City Council, and of the citizens of Montreal, and urged its adoption, declaring it to be perfectly legal, and expressing their willingness that its legality should be duly tested by the Courts, and that it is not now open to them to avoid a legal contestation and deprive the City Council of its right to frame a new By-Law, or the Citizens of their right to vote thereon, should the present be found not to be in conformity with the law as it now stands.

That the legality of the said By-Law might have been tested long since, and a final decision obtained before the Courts, had the Honourable the Attorney-General for the Province of Quebec given his consent, as he was duly called upon to do, to proceedings being adopted in his name, and that, consequently, if there has been any delay in obtaining the said judicial decision, it has been owing to the course taken by the said Attorney-General, and the said Railway Company.

That under present circumstances, and considering the state of the money market, some considerable delay must elapse before the said Railway Company can proceed with the construction of the Road, and that there is ample time left to obtain a judicial decision without in any manner injuring the position of the said Railway Company.

That the policy of allowing municipal funds to be used for the purpose of constructing, or aiding in the construction of Railways, is, judging from the experience of this and other countries, most questionable; and for the purpose of guarding the public interest, and preventing the most deplorable abuses, it is essential that the action of municipalities in their relations with Railway enterprises should at least be kept under the closest judicial control.

Wherefore your Petitioners pray that the said Bill may not become law.

Montreal, 3rd December, 1872.

APPENDIX NO. 2.

Memorandum for His Honour the Lieutenant-Governor :

In Re MILLION BY-LAW.

The object of the bill is to legalize the by-law, on the ground that it was adopted by the City Council and approved by the

majority of the qualified municipal electors.

The opponents of the bill, however, assert that the majority of the legal voters are now, and always have been opposed to this by-law, and that they abstained from voting under circumstances which fully justified them in so doing. With regard to the City Council, if it adopted the by-law it was after great hesitation, and on the understanding that it was legal and would be judicially tested, as is being done. The opponents of the bill further assert that the by-law is unjust, some of its conditions illusory, the amount granted to this particular railway excessive, and finally that this bill cannot be passed without making a radical change in the City Charter of Montreal, for which neither the City Council nor the citizens have petitioned.

All enquiry into the truth of these allegations has been strenuously resisted by the promoters of the bill, both before the Legislative Assembly and the Legislative Council, and with success.

It is deemed unnecessary here to enter into details as to the very extraordinary means adopted by the promoters of the by-law to arrive at the result which they have now reached, as the circumstances have been made public.

It is claimed that under these circumstances it is against all reason to presume the past consent of the City Council or of the parties interested.

But while the Legislature cannot base its approval of the by-law upon the previous approbation of the Council and the citizens, neither can it act on its own independent judgment of what is right and proper in the interest of the city and its inhabitants generally, since it has no evidence whatever before it, to justify its action. Still less can it be guided by the mere impression of some of its individual members who may think that the Council and the majority of the parties interested are now in favour of the by-law. The obvious way of testing the question would be to pass the proposed law, subject to the ratification of the Council and the parties really interested.

As it is, the bill is without precedent, and contrary to all principle, nor is it proved even to be necessary or likely to be useful to the Montreal Northern Colonization Railway Company.

While its real object is to interfere with pending actions, its promoters have been driven to substitute for a direct clause to that effect an indirect one, and in this manner even the provision in the

bill as originally introduced, which saved the rights of the plaintiffs as to their costs of action, has disappeared. Its effect is to create a mortgage upon the real estate of Montreal, on the strength of an illegal vote of tenants and disqualified voters, who have nothing to pay under the by-law, which is arbitrary taxation in its worst form.

The bill, if passed, must be a blow and a discouragement to good municipal government. This by-law has been passed by a bare majority of the City Council, after it had been opposed for years by a number of members of the Council, well known for their high character and public spirit. If the legislature ratify the act of the majority, it should not do so hastily and without knowing the grounds upon which the by-law was opposed in the Council.

Finally, leaving out for the present all question as to the limits of the power of Colonial Legislatures, it is submitted that if a Legislature, after delegating to a municipality the right to impose a local tax for railways generally, whether inside or outside its limits, and without any restriction whatever as to the amount of such tax, proceeds to legalise by *ex post facto* legislation the municipal operations in the easy manner intended by this bill, grievous injustice must be done to individuals, and not only the rights of property in this Province, but the public credit, must be seriously impaired. A precedent will have been created which must soon bear fruit, and with the same facility with which this bill so far has been rushed through, would some other bill be passed which would enable the Company to receive the money subscribed without fulfilling the conditions attached to the subscription.

The petitioners, under the circumstances, respectfully but earnestly claim the protection of Her Majesty's representative in this Province, and call upon him to refuse his sanction to this bill, and refer it to His Excellency the Governor-General of the Dominion.

(Signed,) EDMUND BARNARD,
for Petitioners.

Quebec, 21st December, 1872.

LAW ARGUMENT.

Statement of reasons in support of Petition to His Excellency the Governor General in Council, for the disallowance of the Act passed by the Legislature of the Province of Quebec, in the last session intituled "An Act to confirm certain

By-Laws authorizing subscriptions of stock in the Montreal Northern Colonization Railway Company.

The first general proposition submitted by the petitioners in support of the memorial is that the Act intituled "An Act to confirm certain By-laws, authorizing subscriptions of Stock in the Montreal Northern Colonization Railway Company," is inoperative and null, because it is an excess of Legislative jurisdiction, *ultra vires* of the authority conferred by the British North America Act, 1867, and this upon three distinct grounds.

1st. The subject matter of the Act does not belong to the class of subjects over which the Provincial Legislatures have jurisdiction.

2nd. It contains not merely by necessary implication, but in express words an assumption of judicial authority, usurping the functions which appertain exclusively to the Courts of Law.

3rd. It is retroactive in its operation and in the nature of an *ex post facto* law.

The first step towards a proper understanding of these very important questions must be a careful examination, applicable to them all, of the precise position which the Provincial Legislatures hold by the British North America Act. What are the powers delegated to them, and what the verbal and constructive limitations attached to those powers?

In entering upon this examination it must be premised that there is a great difference between the position and character of the Dominion Parliament and the Provincial Legislatures. This difference is not merely in degree of jurisdiction but also in the kind and nature of the powers. Although both the Dominion and the Local Legislatures are subordinate bodies, and to the extent that their power is derived from the Imperial Parliament, are equally limited by the intent as well as the letter of the Imperial Act, yet the nature of the powers of the Local Legislatures is evidently inferior to that of the Dominion; and the argument founded upon the rules controlling corporate bodies in the exercise of the powers delegated to them, has much greater force in the case of the Local Legislatures than it has in the case of the Dominion Parliament. They receive what is specially given to them. They can make laws in the certain limits assigned; but beyond this limit they cannot go. Any excess, either in the subject matter of a law or in the violation of the principles which

underlie and control the legislation of all corporate bodies, is fatal to their acts, and this whether the vice be apparent from the letter or from a just construction of the spirit. The terms used by the "British North America Act," in relation to the Dominion Parliament are very different from those used in conferring powers upon Local Legislatures. (For the former see Sections 17 and 91, and for the latter Sec. 92.) The Dominion Parliament is the residuary depository of the Legislative authority. No general or constructive powers whatever, are confided to the Local Legislatures, which in this respect are different from and inferior to the State Legislatures in the neighbouring Union. In those the chief and general power of making laws resides, and to the Congress is committed only the limited and exceptional.

There ought, therefore, to be no confounding of the defined and specific powers conferred upon our Provincial Legislature with the large and general powers belonging to the Dominion Parliament, and still less, of course, with the undefined and comprehensive authority of the Imperial Parliament.

The Legislature of Quebec is as truly a limited Corporation as the Municipality of Montreal and is to be tried by the same rules upon questions relating to the nature and extent of its authority. Without following further the examination of the limitation of the powers of the Local Legislatures, the specific grounds of objection relied upon will now be explained:

1st. The first of these is that the subject matter of the act does not fall within the class of subjects over which the Provincial Legislatures have jurisdiction by the British North America Act of 1867.

Under the terms of the latter Act sec. 92, "10 A., Railways connecting the Province with any other or others of the Provinces, or extending beyond the limits of the Province, are excepted from the local works and undertakings in relation to which the Provincial Legislatures are empowered to legislate, and the legislation relating to such railways is exclusively reserved to the Dominion Parliament, sec. 91, "29. The provisions under the letter C. in sec. 92, "10, confirm the other, and as an illustration of the comprehensiveness and true meaning of this reservation reference may be made to sec. 92, "13, by which Ferries between two Provinces are included in the subjects in which the Dominion Parliament has exclusive jurisdiction. Now, upon a

reading of the Quebec Act complained of, there will be found in it a clear assumption of this prohibited power, as will appear from the following statement:

The Montreal Northern Colonization Railway Co. was incorporated by the Statute of the Legislature of Quebec, 32 Vic., c. 55. The Road purported originally to be a road from Montreal to St. Jerome, some forty miles distant; a chief object being to supply the city with firewood, but the Statute contained a provision of covert design and of scarcely doubtful illegality for carrying the road in the direction of the City of Ottawa to connect with any road which might be built by the Canada Central Road.

By a subsequent Statute of the same Legislature the Company was empowered to extend their road to Deep River on the River Ottawa.

By an Act of the Dominion Parliament, 33 Vic., c. 52, sec. 3, 4, the Canada Central Railway Co. is authorized to amalgamate with the Montreal N. C. R. Co. in such a manner that the latter would be absorbed in the former. This power to connect given to the one road in the Province of Quebec, and the power to amalgamate with it given to the other in the Province of Ontario clearly makes the Montreal N. C. R. Co., an interprovincial road. That it is such a road is apparent from the terms of the By-law which is incorporated with the Quebec Statute, and makes part of it. Provision is made therein for the building of a bridge at Hull to connect that railway with the Canada Central Railway, and to lay down a third rail for the same purpose, and it is a part of the By-law and consequently of the Statute, "That for the purpose of "insuring a connection between the said "road and the trade of the Upper Ottawa, "the said Company shall on or before the "completion of the Railway to Hull "make such arrangements with the Canada "Central Railroad Company as shall enable "them to run cars direct from Montreal through to the extreme western point "reached, or which may hereafter be reached by the said Canada Central Railway."

The schedule A § 6 of the Act enters at length into details concerning the arrangements to be made, which leave no room for doubt as to the interprovincial character of the railway to which they relate, and if anything were required to strengthen this conclusion, it will be found in the report of the Engineer of the Company, Mr. Legge, accompanied by maps, which in its

whole course and details relates in express terms to a railroad from "Montreal to the City of Ottawa," and contains estimates for a bridge at Hull as a part of the road. Upon this report and estimates as a matter of fact the By-law was based and a sum of \$50,000 is appropriated for securing such arrangements. From the effect of this excess of legislative authority there is no escape. It is of itself so sufficient to make the disallowance of the Statute complained of a manifest necessity that it seems hardly necessary to pursue the argument further.

2nd. The second ground of objection is the third stated in the memorial.

It is that in passing the Act complained of, the Legislature has assumed to exercise judicial authority, and usurped in direct terms the functions which appertain exclusively to the Courts of Law.

The limited character of the authority conferred upon the Provincial Legislature has been already shown. Nothing is better established in doctrine than that in constitutional governments the legislative and judicial functions must be kept distinct. Even in England this principle is admitted and constantly insisted upon, although Judge-made law on the one hand and Legislative interpretations on the other, which should be left to the Courts, sometimes occur. But in governments founded on written constitutions the powers of each of these departments of the State are separated, and it is fundamental that one should not be allowed to intrude upon the other. Such is the written rule in the constitutions of the neighbouring Union; such it is under the *Code Napoleon* and other Continental Codes; and the same rule results necessarily from the terms of the B. N. A. Act. The whole power of the Provincial Legislature is derived from Sec. 92 of the B. N. A. Act, with the exception of the provisions relating to agriculture and immigration contained in Sec. 94. The words of the former section are that "In each Province the Legislature may exclusively make laws" within the classes of subjects enumerated. "*May make laws!*" Here is a power with a necessary limitation not to give judgments, or, which is the same thing, to prescribe what judgments shall be given by the Courts in the application of pre-existent laws. These are judicial and not Legislative attributes. Now what are the facts with reference to which the foregoing rules have been stated. In the month of April, 1872, the City Council passed a By-law which a large number of

real estate owners in Montreal strenuously opposed, upon grounds of the gravest character, one of these being that the By-law could legally be voted upon only by owners of real estate, whereas in fact it was voted upon and sanctioned by a great body of voters not thus qualified, thus exposing property owners to be taxed by those who hold no real property in the city.

Application was then formally and repeatedly made to the Attorney-General of the Province for permission to test the validity of the By-law in his name. This permission was, without reason or justification, peremptorily refused, and suits at law were instituted in the name of private parties for that purpose against the Corporation. While these suits were pending, as they still are, the M. N. C. R. alone, without the cooperation or apparent consent of the Corporation of Montreal, petitioned for a confirmation of the By-law. The Legislature, without any evidence before it, and rejecting the application of the opponents of the By-law to be permitted to prove their pretensions, passed the statute complained of. By this statute it is enacted that the By-law which, as before stated, is with all its schedules incorporated with and is part of the statute, is declared "legal and valid," "and that it shall be *considered*" "and *adjudged* as having been legal and "valid, and shall be *considered* and *adjudged* "as having been legal and valid from the "date of the passing thereof;" and all taxes and assessments imposed or levied, are declared valid. Now not only is the tenor and necessary effect of these terms to prescribe to the Courts what judgment they shall give in disposing of suits brought under the pre-existent law, but the very words used, "*considered* and *adjudged*," are those in which judicial decisions are invariably expressed. This is not what is called a Legislative interpretation of a doubtful law, or a declaration to make clear that which was obscure in a former one, but it is an affirmation, that that was valid from the beginning which was not valid, and that formalities essential to its validity had been observed when they had not been observed; and upon these unfounded assumptions the Courts are to be compelled to dismiss suits without reference to their having been well founded, and to punish the suitors for the exercise of their undoubted right by leaving them to pay their costs. Of course a number of statutes may be produced in which injustice has been done by hasty Legislation; but isolated instances of

bad Legislation, more or less analogous to the statute under consideration, cannot be accepted as legal precedents. They only prove that there has been too much wild and unjustifiable Legislation in connection with railroads and other cognate subjects, in this and other countries. They are a warning and not an example for either law makers, or Courts. or Jurists to follow. If anything could enforce the necessity for a firm and decided action in arresting the dangerous course of yielding to the pressure of powerful and for the most part corrupt influences in defiance of all sound principle, it would be the aggregate of the cases of abuse which have already occurred. As to the decisions of Courts on this point, they do not reach any case in which there has been an encroachment by Legislative upon judicial authority, so marked and extreme as in this; and it is not improper to add that such was the opinion expressed by the Solicitor General of Quebec, on the discussion of the Bill in the Legislative Assembly.

3rd. The third point submitted is that the Act is retroactive in its effect, and is in the nature of an *ex post facto* law.

A good deal of what has been said under the 2nd head applies to this. The Act impairs vested rights which is an assumption of authority, denied in specific terms, in all written constitutions, and which cannot be conceded without the destruction of all the principles, that underlie the security of property. It is without doubt a vice in Legislation to be carefully watched, and promptly checked by Courts, and by all authorities having a control over it. The reprehensible character of the Act, and the particularly vicious passages in it, have been already exposed and the effect of these has been, as stated in the memorial, to deprive those of the Petitioners, who had brought suits of their right to a decision of the Court in which they were pending; leaving them liable to the costs of such suits. With respect to other real estate owners in Montreal it has taken from them an equal right to test by the decision of a competent Court the validity of the By-Law which creates a mortgage on their property, and exposes them to the operation of a distress warrant without any previous judgment. These are not small violations of vested rights, and if they can be permitted in this case, and drawn into a precedent, as they will be if sanctioned by the acquiescence of the Dominion Government, it is impossible to say, to what extent the legal-

ized spoliation thus begun may be carried.

This branch of the subject need not be further pursued; enough has been said to shew the unconstitutional and reprehensible character of the Act, and the conclusion seems inevitable, that it is null as being an excess of Legislative power, as well upon the two latter grounds, as upon the first one urged. And if so it is presumed that the Dominion Government will feel that it has no discretion to exercise, but will disallow the Act, as a matter of necessary and absolute right.

If it should be considered, however, that His Excellency the Governor General in Council, has a discretion to exercise in all cases of disallowance, then come in the large considerations arising from the preceding statements under the second and third heads, of the unjust and oppressive character of the Act. There cannot be two opinions as to the proceedings of the Legislature of Quebec being a determined and high-handed abuse of legislative power, and that in a class of subjects in which great care ought to be exercised. The imposition of taxes for any purpose is always to be kept within the limits of a clear authority, and taxation for the benefit of a Company carrying on an enterprise for its own benefit, handling large sums of money, and having almost unbounded influence, is to be viewed with a jealous scrutiny. So great is the danger of imprudence and corruption in the imposition of taxes for subsidies to Railway Companies, that in the neighbouring Republic it has led to express constitutional prohibitions. In a case reported and discussed in the 5th Vol. of the American Law Review (pp 133 135) it is said: "If Railroads be, as they undoubtedly are, private enterprises, then upon general principles they are not proper objects for taxation." Indeed the right to vote municipal aid to R R Co's has been vigorously disputed from the beginning in the United States, and many eminent jurists have always denied it.

The abuse of Legislative power in passing the act complained of, even if this power were unquestionable, is manifest and extreme. It is shewn in:

The refusal to admit proof of the petitioners grounds of objection to the by-law, more than one of which are unanswerable, and must have been fatal to it; in the disregard of pending suits, and express interference with judicial actions; in the smaller matter, but important in principle, of inflicting upon the suiters the burden of pay-

ing the costs of their suits, and in the taking away from the petitioners of the right of testing the validity of the by-law in the competent courts.

There is a remarkable and important fact in connection with this part of the subject which ought to be noticed. It is that no petition appears to have been presented to the Quebec Legislature by the Corporation of Montreal to confirm this By-law. The confirmation took place upon the petition of the Company alone. This is a very remarkable defect. Either the By-law was valid or it was not. If the By-law was valid the interference of the Legislature was idle and absurd but it was more than that. It was an unwarrantable undertaking to dispose of a matter within the authority of the City Corporation, and with which alone under the existing law that Corporation was entitled to deal. But that the By-law was without doubt invalid appears not only from the representations made in the Petition to the Legislature against it, and the facts and law above stated and exposed, but it must be taken as admitted both by the Railroad Company and the Legislature in the very fact of the one seeking and the other granting the confirmation, for no confirmation is needed for that which is valid but for that which is defective and null. The City Corporation by which the By-law which purported to be passed and which is most deeply interested in the question of its validity or invalidity remains silent, making no representation and giving no indication of its wish or its acquiescence in the interference of the Legislative Act affecting as it does the contract between the Corporation of the City of Montreal and the Railroad company. Upon what principle is it that this could have been granted or can now be sustained when not asked for by the party primarily and chiefly interested. There observations apply not only to the City of Montreal but to six other municipal corporations which are equally silent upon an interference with their contracts with the Railroad Company.

It is difficult to imagine any case which could present stronger claims for the exercise of the disallowing power on the ground of abuse than this.

In conclusion, the Petitioners submit that they have established all their propositions, and that the act ought to be disallowed for the following reasons :—

1st. It is an excess of legislative power and unconstitutional :

Because it relates to an Inter-Provincial R. R. Company—a matter belonging to a class of subjects over which the Provincial Legislatures have no authority ;

Because it is, not only in effect but in express words, an usurpation of judicial authority and of the functions which appertain exclusively to the courts of law ;

Because it is retroactive in its effect and violates acquired and vested rights.

2nd. It is unjust and oppressive and a manifest abuse of legislative power.

Montreal, 22nd February, 1873.

ADDITIONAL DOCUMENTS SENT TO OTTAWA

IN SUPPORT OF THE MEMORIAL AGAINST THE MILLION DOLLAR BY-LAW AND THE ACT OF THE QUEBEC LEGISLATURE RATIFYING THE SAME.

DOCUMENT NO. 1.

Reasons of Opposition to the By-Law as being injurious to the material interests of Montreal

A large number of the owners of real estate and citizens of Montreal, protest against several provisions of the said By-law for the following amongst other reasons.

Because the By-law provides that the station, workshops and terminus of the Northern Colonization Railway shall be within the eastern limits of the city of Montreal, and not elsewhere ;

Because without a Bridge across the St. Lawrence, at or near the terminus or station the railway will be of comparatively little benefit to the commerce of Montreal ;

Because it is absolutely necessary for the purposes of navigation that any bridge over the St. Lawrence, below the present harbour, should be built at a height of not less than 120 feet above the surface level of the river, as otherwise, many sea-going vessels will be unable to reach the wharves above the said bridge ;

Because the site of the contemplated terminus is not more than about 30 feet above the level of the river ;

Because every car from the station and every vehicle from the city would have to run back to the level of Sherbrooke street, at least, to enable them to cross the bridge ; and cars, &c., from the south, bound to the terminus, would be subject to a similar difficulty.

Because at St. Helen's Island the current now runs at the rate of seven miles an hour, and eight miles at Ile au Mouton, and as the mason work of the bridge would occupy one-seventh of the water section of the navigable channel, the velocity of the current would be so largely increased as to render the approach to the existing harbour and wharves difficult or impossible to all vessels except the most powerful steamers. A bridge so situated would also be dangerous in many ways to rafts and shipping.

Because the masonry of the bridge from Sherbrooke street to the intended station would prove a serious impediment to the improvement of Montreal East, and to the business of Hochelaga, which is destined soon to become of great magnitude.

Because without a bridge there will be no through traffic along the road, to the South of the St. Lawrence and the United States, from about the end of November till the beginning of May in each year.

Because the bulk of the lumber and other heavy articles coming from the Ottawa districts to Montreal, for local use or export by the St. Lawrence, will be conveyed thither by water, as being by far the cheapest mode of transportation.

From due consideration of these facts the conclusion is inevitable that if a second bridge is to be erected over the St. Lawrence, at or near Montreal, the site ought to be above and not below the present harbour.

If the terminus only be placed at a point in the eastern part of the city, it can have no communication by rail along the wharves, with the Victoria Bridge, because the narrow space would not admit of such additional traffic without ruinous loss and injury to the shipping business of the port, which is now greatly overcrowded and impeded by the Grand Trunk track there; besides which, the existing bridge will be scarcely sufficient for the purposes of the latter railway alone, which before many years will wholly exhaust its capacity of transit.

These are only some of the objections which might be urged against establishing the station of the Northern Colonization Railway in the proposed eastern site; but enough has been said to show that the project is both foolish and mischievous. Either of two things must be the result of persevering in it: If no bridge should be constructed, the railway, besides other disadvantages, will be of little value to the trade of the city; if there should be a bridge, at or near the terminus, the site is

the worst that could be selected, while the cost is estimated at ten millions of dollars.

Nor is this all. The Northern Colonization Railway was first incorporated chiefly with the view of supplying Montreal with firewood from the vast reserves of timber in the Districts to the north of the city. But step by step this main object of the scheme has been changed and extended, until the road has now become an acknowledged link in the plan of the Canada Pacific Railway.

For some years past the scarcity and high price of fuel has become a serious evil in this community, wherein, from the severity and long duration of the winter, it is a primary article of necessity; and the prospects of the future are still more alarming in that respect. This is a question of supreme importance to the people of Montreal. It has been computed that the forests of the two counties of Terrebonne and Argenteuil would alone supply the city with cordwood to the extent of forty-six millions of cords—a quantity sufficient for its wants on that head for several generations to come; and we are further told that there is, besides, “an almost endless extent of unconceded territory which produces the usual quality of timber.” Now the probable, nay, the certain result of the alterations that have been effected in the scheme of the Northern Colonization Railway is evident. It has, as already stated, been virtually incorporated with a long line of road to extend from Quebec to the shores of the Pacific ocean, and the consequence must be that Montreal will be deprived of the immense store of fuel referred to, and of which it is in such sore need. Past experience proves that the construction of a great railway for general traffic enhances the price of firewood along the line and in its vicinity; and no promises, no agreements, no legislation, can prevent this result.

The clause of the City By-law, therefore, providing for the cheap carriage of cordwood by the Northern Colonization Company would be found of little or no practical value, for there are many and obvious ways of evading such a compact, as the present dearth of firewood, caused by the Ontario railways, fully testifies. So, too, has it been in Montreal. When the St. Lawrence and Portland Railway was about to be constructed, a leading inducement held out to our citizens, in return for their support, was that the road would secure to them abundant and cheap fuel;

the Grand Trunk Railway was to confer the same benefit upon them ; but in neither case was the promise fulfilled. The truth is, that any charge for freight which the company could impose for the mere transport of firewood would be but a slight compensation for the advance in price at the points of supply arising from the competition of a great city like this. It is consequently certain that the company, as now composed, will keep the rich preserves of fuel under their control for their own purposes, let the loss to the owners of the wood, or the wants of the people of Montreal, be what they may.

The conclusion to be drawn from those facts is that the Northern Colonization Railway ought to be under a separate and independent management, with no amalgamating connection with other railroads. In no other way can it serve the purposes for which it was originally intended.

The opponents of the By-law and the Act confirming it, apart from the objectionable form which the project has gradually assumed, are desirous of a railway connection between Montreal and Ottawa. But they complain that the measure has been carried in the City Council, and has received the sanction of the Provincial Legislature by means of persistent intrigue and misrepresentation ; that the By-law imposes a heavy burden on the owners of real property in Montreal, by the illegal votes of electors who possess no such property ; that the grant to the Northern Colonization Railway is excessive, especially when it is considered that the harbour of Montreal has to be enlarged and improved at a heavy expense to the city ; and that the scheme as now designed would be an injury, not a benefit to the interests of Montreal.

The complainants have likewise been advised that there are valid legal and constitutional objections to the proceedings in this matter.

It is for these reasons that they have prayed for the disallowance of the said Act of the Legislature of Quebec by His Excellency the Governor General in Council.

DOCUMENT NO. 2.

MEMORANDUM.

Showing that Taxes which have been im-
providently assumed for the payment of
Municipal Loans have been frequently
resisted on technical and other grounds,

and the objections sustained by the Courts ; and that such resistance is especially to be apprehended, when the Loans have been contracted for purposes which, even at the time, are not approved by considerable numbers of the intelligent part of the Community, and when it has been found necessary to resort to unusual measures to secure their adoption :

Few subjects have attracted the attention of American jurists and statesmen to the same degree as that of municipal subscriptions to railways. In the early days of railway enterprise, legislative acts sanctioning such subscriptions were the rule, and although from the first strongly attacked as wrong in principle, they were universally upheld, as far as one can judge from the writers on the subject, by the state courts, and even by the United States tribunals.

What a change, however, has of late years taken place in the jurisprudence and in public opinion, can be gathered from almost every report of the decisions of the Supreme Courts of the States which comes to hand. In the States of Iowa, Wisconsin, Michigan, California and Illinois, such subscriptions are being mercilessly set aside by the Courts as contrary to the spirit, if not the letter of the State constitution, while in other States such as Pennsylvania, the Courts energetically condemn the system as pernicious and dangerous, but hold that it can not be altered by judicial authority, which has resulted in the enactment of an express constitutional provision, prohibiting such subscriptions for the future—and New York and other States have either followed or are following in the same direction. How bitter must have been the experience which has led to this revolution appears from the language used by the most eminent judges and writers.

In one case we are informed that ruin and disgrace have been the invariable and legitimate consequences of the system, and the end is not yet. " We know, say the court, in another case, the history of these " municipal and county bonds ; how the " legislature, yielding to popular excitement about railroads, authorized their " issue. How grand jurors, and County " Commissioners, and City Officers were " moulded to the purposes of speculators. " How recklessly railroad officers abused " the over-wrought confidence of the public,

"and what burdens of debt and taxation have resulted to the people"; and in the series of letters published by Governor Haight, of California, on the subject, which have attracted universal attention the following passage occurs: "The scenes, he says, which transpire in legislatures in our time, the lack of conscience exhibited; the power of organized corruption outside and inside these bodies; the audacious attacks upon the public interest and upon private right; the popular apprehension when legislatures convene, and the popular satisfaction evinced at their adjournment, are significant of the necessity that the judiciary should vindicate the constitution, and secure the public safety by confining legislatures within their legitimate powers."

In two words the result in the United States has been this: Where the subscriptions have not been directly and openly repudiated, they have been prohibited for the future; and innocent investors have been left to enforce their claims as best they could, by execution upon unwilling communities, which have resisted the levy as that of an unjust and fraudulent tax; and, a circumstance worthy of remark is, that the decisions above mentioned were rendered many years after the original investment, and not only reversed the established jurisprudence, but did so on purely technical grounds.

Nor is the experience of the United States singular in this respect. The history of the Canadian Municipal Loan Fund is fresh in the memory of all. The capitalists who invested therein were, at one time, in great danger of losing their money; and, when the Government, for its own protection, stepped in, they were well satisfied, in many cases, to accept a compromise, although the result was the more or less arbitrary conversion of a loan bearing six per cent interest, into one bearing five.

The case of the City of Hamilton and the great losses suffered by its creditors, are also well-known. Neither is the trouble in store, in consequence of the dealings with Lower Canadian municipalities in the interest of the North Shore Railway Company, a secret, and what the ultimate effect upon the credit of the country must be, can be seen by the present position in the markets of the world, of the individual States in the Union, to say nothing of the United States themselves.

It is in the light of such facts that the

course pursued by the promoters of the By-law now in question, must be considered, and the full significance realized of the nature of the precedent sought to be introduced.

In the first place, when the Company after nearly three years efforts, had lost all hopes of convincing the City Council, it had recourse to legislative assistance to repeal the provision of the City Charter requiring a two-third vote to pass a By-law of this kind, after which it interfered with the whole force of its organization in Municipal elections and secured the required bare majority of the Council. Appeals to local, national and religious prejudices, political and municipal combinations, the judicious outlay of money, and the parading of a long procession of St. Jerome *habitants* through the streets of the city with their hundreds of loads of wood for the benefit of the poor were trusted to do the rest.

Not satisfied with this, the Company endeavoured, by surprise, at the end of the previous session of the Quebec Legislature, to introduce in the City Charter a clause for the purpose of qualifying as voters on the By-law, those who by reason of the non-payment of their taxes would otherwise have been disqualified, some 11,000 out of 19,000 Municipal electors. And although the attempt in that form was frustrated, the desired object was afterwards indirectly obtained in a still more insidious manner, and the disqualified voters have been actually allowed to vote on the By-law.

The opponents of the By-law relied on its being one which the Courts would set aside, and it passed in the Council on the distinct understanding that its validity would be judicially tested.

On this understanding they brought their suits at law. They could not join in, and thereby give to a certain extent their sanction to, the proceeding of taking a popular vote, for they could not possibly control the results of such a vote, except by a scrutiny, which it was not clear that the law had provided for, while it was certain that such a scrutiny would be a long and tedious proceeding, and would leave them liable in the meantime to a distress warrant without previous judgment for the amount of the assessment under the by-law. But the moment they brought their suits at law it became apparent that the Attorney-General had decided in advance that the Courts would be closed against them, and that he relied upon the support of the Legislature of Quebec. Upon this point

the correspondence with the Attorney-General, the application of the Company for an Act to ratify the by-law, the form of the notice to the public that such an application would be made, the bill as introduced compared with the bill as passed, the written protest of the Company against the Legislature allowing, and the consequent refusal of the Legislature to allow any evidence to be adduced in support of the allegations of the plaintiffs in the pending suits which the bill was intended to suppress, the nature of these allegations, and, finally, the memorial of the opponents of the bill to the Lieutenant-Governor praying that it should not be sanctioned, all these documents disclose and establish beyond all doubt a state of things fortunately without precedent in the annals of British legislation. And the result is that a by-law has been so far sanctioned, which is against the interests of the city of Montreal, all the conditions on the strength of which it has received support from the east end of the city being such as must necessarily be altered by future legislation.

In the meantime the real estate of the city is to be taxed by the vote of those who have no property, and who have nothing to pay under the by-law.

Under these circumstances the memorialists feel that no alternative is left to them, and that it is their duty to contest this by-law by every constitutional means in their power.

PROVINCE OF QUEBEC, }
District of Montreal. }

To the Honourable Gedeon Ouimet, of the City of Montreal, Her Majesty's Attorney General, in and for the Province of Quebec.

The Petition of Henry Lyman, Thomas Cramp, Alexander McGibbon, William Murray, Harrison Stephens, William Clendinneng, Romeo H. Stephens, of Montreal, Esquires, humbly represents;—

That your Petitioners are proprietors of Real Estate in the City of Montreal, and as such interested in contesting the validity of the by-law voted by the City Council of the City of Montreal, on the third day of April, instant, for the purpose of taking one hundred thousand shares in the Montreal Colonization Railway.

That they are, to wit, your Petitioners are ready and willing to give security for the amount of all costs which Her Majesty's Government for the Province of Quebec

may incur by reason of such contestation, said security to be given in such manner, and for such amount, as you may determine.

Wherefore, your Petitioners pray that you may allow the said contestation to be instituted in your name in the manner provided by the nine hundred and ninety seven article of the Code of Procedure, and that the undersigned Attorney may be by you empowered to sign your name in the prosecution of the said contestation.

And your Petitioners will ever pray.

(Signed) EDMD. BARNARD,
For Petitioners.

Montreal, 16th April, 1872.

The suit intended to be instituted against the Corporation of Montreal being solely for the purpose of contesting the validity of the By-Law passed by the City Council on the third day April instant, by which the Corporation of Montreal is authorized to take one thousand shares in the Northern Colonization Railway, and there being no reason shown which might induce the belief that the Corporation of Montreal has violated the provisions of the Act by which it is governed, or has become liable to a forfeiture of its rights, or has exercised privileges and franchises which does not belong to it or is not conferred upon it by law, the Attorney-General does not see that he is empowered by law to allow his name to be used in the proposed suit.

GEDEON OUIMET,
Attorney-General.

Montreal, April 18th, 1872.

MONTREAL, 18th April, 1872.

To the Hon. Gedeon Ouimet, Attorney-General :

SIR,—We have been shown by Mr Barnard, Advocate, the memorandum in writing signed by you in answer to our petition asking to be allowed to use your official name in proceedings to test the validity of the By-law of the Corporation of Montreal authorizing the subscription, by the Mayor, of stock to the amount of \$1,000,000 in the Montreal Northern Colonization Railway Company. The grounds taken by you in withholding your consent to such proceedings are that no reason is shown to induce the belief that the people of Montreal have violated the provisions of the Acts by which it is governed. This we had supposed to be unnecessary, but in respectful deference to your opinion to the contrary, we beg leave now to state some of the leading grounds of objection to

the validity of the By-law in question, viz :

The 5th and 6th Sections of the Statute 34 Vic C. 37, and the provisions of the various Railway Acts refer to an absolute and not to a conditional subscription of stock, and as we are advised, the conditional subscriptions authorized by the By-law would be illegal; and, moreover, several of the conditions are themselves illegal.

2. The City Council has by law no power to delegate its authority, as it has done in the By-law, in one instance to the Finance Committee (Sec. 1—5), and in another (Sec. 1) to the majority of the Directory representing the stock subscribed by the city.

3. The section of the By-Law (Sec. 1 & 2) relating to the appointment of Directors, is illegal and in direct contravention of 34 Vic., C. 37, Sec. 6, which provides what number of Directors to represent the Corporation shall be agreed on by the Railway Company and the City corporation, and cannot be fixed by a vote of the City Council as illegally provided in the By-law.

4. As the 5th Section of the 34 Vic., C. 37, refers as to formalities to any statute to be passed in lieu of Chap. 24 and 25 of the Con. Stat. of Lower Canada, the Municipal Act of 1870, and particularly Section 497 thereof applies, and, therefore, the By-law is null, as being made subject to the ratification of the Municipal Electors generally, when it should have been made subject to the ratification of the Municipal Electors, proprietors of Real Estate only.

5. The By-law being conditional the assessment cannot be absolute.

In respectfully urging upon you to give consent to the use of your official name in proceedings to test the validity of the By-law in question, we beg to state that we are owners of Real Estate in this city and interested to prevent the imposition of illegal taxes upon it, and that many other proprietors of Real Estate to a large amount are also desirous of having the validity of the By-law legally tested. We may add, that we are not actuated by any motives of hostility to the M. N. C. R., (although we consider the amount voted excessive), but we are only anxious to have our just rights and those of other proprietors of Real Estate in the city established and protected.

We have the honour to be, Sir,

Your obed't servants,

We the undersigned owners of Real Estate in the City of Montreal, respectfully

join in the request contained in the foregoing letter.

(Signed,)

EDWARD MACKAY.
JOHN RANKIN.
JAMES JOHNSTON.
H. MUNRO.
J. BAYLIS.

Montreal, 23 Aout, 1872.

MONSIEUR,—Une action a ete intentee par vous, comme Avocat de Monsieur Molson, contre la Corporation de Montreal pour faire mettre de cote le reglement dont se plaignent MM. Lyman et autres, et je ne puis, en consequence et tant que durera ce proces, prendre la demande de ces messieurs en consideration.

J'ai l'honneur d'etre

Votre, etc.,

GEDEON OUMET,

Procureur-General.

Ed. Barnard, Ecr.

Province of Quebec, }
District of Montreal. } In the Superior Court.

To Honorable Gedeon Oumet,
Attorney General *pro Regina*, Petitioner.
and

The Mayor, Alderman and Citizens of the City of Montreal, Defendants.

To any of the Honorable the Justices of Her Majesty's Superior Court for Lower Canada, acting in and for the said District of Montreal and residing in the said City of Montreal.

The petition of the Honorable Gedeon Oumet, of the City of Montreal, Her Majesty's Attorney General for the Province of Quebec, who prosecutes in this behalf for and in the name of Her Majesty, complaining of the Mayor, Aldermen and citizens of the City of Montreal, a body corporate, duly incorporated, and existing under and by virtue of the laws of this Province, Defendants.

Respectfully Showeth :

That on the third day of April last past the Defendants, in Council assembled, passed a certain By-law numbered fifty-nine, whereby the Mayor of the said city was, subject to the consent of the qualified electors of the said City of Montreal, first had and obtained, authorized and required for and on behalf, and in the name of the said corporation of the said City of Montreal, to subscribe for and take one hundred thousand shares (equal to \$1,000,000,) of stock in the Montreal Northern Colonization Railway

Company chartered by Act of Parliament of this Province, upon certain terms and conditions set forth in the said By-law numbered fifty-nine, of which a copy is herewith produced, to form part of these presents, and to which the said Petitioner specially refers.

That the said City Council did on the fifth day of April last past, issue and cause to be publicly issued a certain notice whereby the qualified electors of the said city were notified to assemble in general meeting to approve or disapprove of the said By-law, and further notifying them that should a poll be demanded the voting should take place on the said By-law on the twenty-ninth day of April last past, and on every juridical day following, up to the tenth day of May instant inclusive, as the whole will more fully and at large appear by reference to the said notice, a copy whereof is herewith produced, and filed to form a part of these presents, and to which the Petitioner specially refers.

That in so enacting the said By-law the Defendants have violated the provisions of the acts by which they are governed and have exercised a power not conferred upon them by law, and that the said By-law is in consequence illegal, null and void, and so ought to be held and declared for the following amongst other reasons :—

1. Because in and by an Act of Parliament of the late Province of Canada passed in the session held in the 14th and 15th years of Her Majesty's reign, intituled ‘ An Act to amend and consolidate the provisions of the ordinance to incorporate the City and Town of Montreal, and of a certain ordinance and certain acts amending the same, and to vest certain other powers in the Corporation of the said City of Montreal,’ it was and is enacted, “ That it shall be lawful for the said Council of the said city of Montreal to borrow, on the credit of the said city, such sums of money as the said Council of the said city may think proper to borrow on the credit of the city; provided always that the total amount borrowed and remaining unpaid, exclusive and independent of the amount due, or to become due, for the purchase of the Montreal Water Works, authorised to be made in and by the act passed in the seventh year of Her Majesty's reign, and intituled, “ *An Act to authorize the Mayor, Aldermen and Citizens of Montreal to purchase, acquire and hold the property now known as the Montreal Water Works*, shall not exceed at any time the sum of one hundred and fifty thousand

pounds currency;” which sum has long since been borrowed upon the credit of the said city and remains unpaid, and the said Defendants have not been by any subsequent act or law authorized to borrow upon the credit of the said city any sum of money for the purpose of granting aid to any Railway or for paying on subscription of stock in any Railway Company, or for any of the objects or purposes set forth in said By-law.

2. Because in and by the said cited act it is enacted that it shall be lawful for the Council of the said Corporation (subject to the provisions of such act) to make By-laws “ for the raising, assessing and applying such moneys as may be required for the execution of the powers with which the said Council is now or may be hereafter invested, either by imposing tolls and rates, to be paid in respect of any public works within said city, or by any means of a rate or assessment to be assessed and levied each and every year, on real and personal property, or both within the said city, or upon the owners and occupiers thereof in respect of such property, provided that such assessment may in any one year, amount to but shall not exceed one shilling and sixpence in the pound on the assessed and yearly value of the property liable to such assessment, “ which assessment to the amount of one shilling and sixpence in the pound has already been made by the Defendants under By-laws now in force, and the said Defendants have not been by any subsequent act or law authorized to levy any assessment for the purpose of granting aid to any Railway or for paying any subscription of stocks in any Railway Company, or for any of the objects or purposes set forth in the said By-law.

3. Because the said Corporation has no power by law under any circumstances to take shares in the said Railway, in a conditional manner, and moreover that the conditions mentioned in the said By-law impose, and each and every one of them are and is contrary to law, and in particular that the said Corporation cannot impose an absolute assessment to defray the expenditure to be incurred under a conditional By-law, the conditions of which may never be fulfilled or may not be fulfilled at the time and in the manner mentioned in the said By-law.

4. Because the said conditions are more-over illusory, and such as cannot be enforced either against the said Company or the creditors of the said Company, and

that the only effect of the said conditions will be to deceive the electors called to vote upon the said By-law, and induce them to vote in favour thereof on the supposition and belief that the amount subscribed cannot fail to be profitably and judiciously expended, when in reality the said conditions as a security for the proper and advantageous expenditure of the moneys voted by the said electors, are of no value whatever, and that in consequence the said By-law is utterly unreasonable, inequitable and unjust.

5. Because by the said By-law the said Corporation is attempting to delegate its authority in important particulars, and more specially in so far as deciding as to the satisfactory nature of the subscriptions of half a million of dollars of stock by other municipalities, and also as to the option of paying in cash or debentures at par the amount which the said Corporation might be bound under any by-law legally passed to pay by reason of the subscription for stock in the said Railway, and the said By-law is in consequence null and void.

6. Because the section of the said By-law referring to the Directors who are to protect the interest of the said City of Montreal in the Board of Directors of the said Railway, is not in accordance with, but on the contrary, is in violation of law in several and essential particulars, and more particularly in the respects following: The Statute provides that such number of Directors not exceeding three, exclusive of the Mayor, as may be agreed upon between the said Railway Company, and the said City Council shall be elected by the latter, and consequently the City Council could not alone determine, as it does in and by the said By-law, that two Directors shall represent the city of Montreal on the Board of Directors of the said Railway, nor could the said City Council enact as it does, in and by the said By-law that the City Council shall elect two persons generally to be Directors, the Statute requiring that the Directors shall be chosen from among the members of the said Council, nor could the said By-law provide for an annual election of such Directors, the Statute prescribing that the said Directors may be elected and as circumstances may require, removed, and others chosen instead, nor could the said By-law stipulate that the right of the said City Council of appointing Directors should not be affected by any changes in the governing body, or in the constitution of the company,

such stipulation being illusory and illegal, and the said By-law is in consequence null and void.

7. Because by law, the only municipal electors qualified to vote on the said By-law are the municipal electors who are proprietors of real estate within the said city, and that the said By-law being made subject to the vote of the municipal electors generally, is in consequence, null and void.

8. Because none of the formalities required by law to be observed by the said Corporation in the passing of a By-law for taking stock in a railway have been observed, and that all the proceedings of the City Council of the said Corporation in connection with the passing of the said By-law numbered fifty-nine [No. 59] have been, and are irregular, illegal, null and void.

All which the said Petitioner is ready to verify, prove and maintain, when and as this honourable Court, or one of the Justices thereof, may direct, and the Petitioner refers to the affidavits herewith filed in support of the present petition and of the allegations therein contained.

Wherefore your Petitioner, for and on behalf of Her Majesty, prays that a writ do issue in due form of law commanding the Defendants to appear before your Honours upon such days as your Honours may appoint, to answer the Petition, and that by the judgment rendered in this behalf it be declared and adjudged that in enacting the said By-law numbered fifty-nine [No. 59] the said Defendants have violated the provisions of the acts by which they are governed and have exercised a power not conferred upon them by law and that the said By-law be declared to be illegal, null and void, and he set aside and annulled, the whole with costs.

Montreal, May 1872s

Montreal, 7th May, 1872.

To the Honourable Gedion Ouimet, Attorney-General.

SIR,—We, the undersigned, duly qualified Electors of the City of Montreal, and owners of ratable real property situated therein, have the honour to present to you a petition prepared for your signature, for the purpose of testing the validity of By-law No. 59 of the Mayor, Aldermen and Citizens of the City of Montreal, authorizing the subscription by the Mayor of the said city, of stock in the Montreal Northern Colonization Railway Company, to the extent of one million dollars.

In requesting you to sign the said petition, or to authorize some legal gentle-

man to sign it in your name, we beg to say that we are advised by counsel that in passing the said By-law, the Corporation of Montreal has violated the provisions of the Acts by which it is governed, and has exercised a power not conferred upon it by law, and that in consequence the said By-law is illegal, null and void.

We are prepared to offer you any security you may require to indemnify the Government against cost in the proposed proceedings.

This communication will be handed to you by Mr. C. P. Davidson, advocate, our attorney, who is fully authorized by us in the premises.

In conclusion, we respectfully urge upon you our right as electors, and owners of property liable to assessment under the By-law referred to, to have the legality of the By-law tested at our expense, in your name as Her Majesty's Attorney-General, as provided by law. The grounds of objection urged by us are serious and not frivolous, and we are satisfied you will feel it to be your duty at once to accede to our request.

We have the honour to be, Sir,

Your obedient servants,

(Signed) A. W. OGILVIE,
PATRICK LARKIN.
No. 1630.

Department of the Law Offices }
of the Crown. }
Quebec, May 18, 1872. }

R. No. 5962.

SIR,—In reply to your letter, of the 14th instant, I am directed by the Honourable the Attorney-General to intimate to you, that, inasmuch as proceedings taken by Mr John. R. Molson, calling into question the validity of By-law No. 59 of the Corporation of the City of Montreal authorizing the subscription of 100,000 shares in the Montreal Northern Colonization Railway Company, are now pending at the Superior Court at Montreal; he (the Attorney-General) cannot grant the application of Messrs. Ogilvie and Larkin for permission to use his name as Attorney General to test the legality of the same By-law, so long as Mr. Molson's case is not adjudicated upon.

I have the honour to be, sir,

Your obedient servant,

JOSEPH A. DEFOY,

Assistant L. O. C.

To C. P. Davidson, Esq, Advocate, Montreal.





